

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-14521
Non-Argument Calendar

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT January 23, 2008 THOMAS K. KAHN CLERK</p>

D. C. Docket No. 05-00438-CV-W-N

PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff-
Counter-Defendant-Appellant,

versus

MCKNIGHT AGENCY, INC.,
JOE MCKNIGHT,

Defendants-
Counter-Claimants-
Cross-Defendants-Appellees,

RICKY LANE,
RIVERSIDE TURF FARM

Defendants-
Counter-Claimants-
Cross-Claimants,

JANE HOLMES, individually and as the
personal representative of the Estate of Daisy
Beasley, deceased, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Alabama

(January 23, 2008)

Before ANDERSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

Appellant Progressive Specialty Insurance Company (“Progressive”) appeals the district court’s final judgment entered on September 18, 2007. After reviewing the record, and reading the parties briefs, we affirm the district court’s final judgment.

I.

On July 6, 2004, Ricky Lane (“Lane”) was driving a truck for Riverside Turf when he had an automobile accident that killed Daisy Beasley (“Beasley”). At the time of the accident, Lane had automobile liability coverage through Progressive, and McKnight was Lane’s insurance agent.

Both prior and subsequent to the accident, Progressive insured Lane with \$1,000,000 policy limits. Due to McKnight’s clerical error on the Progressive computerized application for the 2004 policy, Progressive bound only \$300,000 in coverage. Both Lane and McKnight mistakenly believed the 2004 Progressive coverage had been renewed with \$1,000,000 limits. The insurance adjuster

discovered the mistake when Beasley's estate sued Lane, and Lane reported the claim.

Subsequently, to minimize its exposure for a \$1,000,000 policy limits claim against Lane, Progressive filed a declaratory judgment action asking the court to limit Progressive's coverage to \$300,000. Lane and McKnight filed counterclaims seeking reformation of the Progressive Policy to reflect the parties' true intent of \$1,000,000 policy limits. Thereafter, Progressive settled the suit against Lane for the limits of the coverage intended by Lane and McKnight: \$1,000,000.

Progressive and McKnight filed cross-motions for summary judgment, and stipulated that there were no disputed issues of fact in relation to the claims before the court. The district court held that the Progressive Policy should be reformed to reflect \$1,000,000 policy limits. The court also found that Progressive could recover from McKnight the difference in premiums between a \$1,000,000 limit policy and a \$300,000 limit policy, plus attorney's fees and litigation costs. Later, the district court changed its prior ruling on reformation because it found McKnight had no standing to reform the policy. The district court then held that Progressive was entitled to \$2,821.76 in unpaid premiums, and \$19,991.00 in attorney's fees and litigation costs, but it was not entitled to recover the \$700,000 excess limits it paid.

II.

This court reviews the district court's grant or denial of summary judgment *de novo*, applying the same legal standards that control the district court's decision. *Shannon v. Jack Eckerd Corp.*, 113 F.3d 208, 210 (11th Cir. 1997).

III.

There is no question that McKnight made a clerical error in selecting the intended coverage limits from a drop-down menu on Progressive's application software. Factually, it is undisputed that (1) Lane qualified for \$1,000,000 policy limits, (2) Lane and McKnight intended there to be \$1,000,000 policy limits, and (3) Progressive would have issued \$1,000,000 policy limits but for the clerical mistake. We agree with the district court that McKnight's error may have resulted in an underpaid premium to Progressive. Those damages flow naturally from the breach. *See Pate v. Rollison Logging Equip., Inc.*, 628 So.2d 337, 345 (Ala. 1993). However, there is no proximate cause between McKnight's clerical error and Progressive's obligation to pay an additional \$700,000. Rather, we conclude that Progressive is in the "same position it would have been" had the error not occurred, with the exception of the additional premium due. *See Wood v. Old Security Life Insurance Co.*, 643 F.2d 1209 (5th Cir. 1981).¹

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the Fifth Circuit prior to October 1, 1981.

For the above-stated reasons we affirm the district court's September 18, 2007, final judgment.

AFFIRMED.